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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1989

Addendum

POLAND */

[15 October 1990]

PART I

1. The second periodic report of Poland on implementation of the International Covenant on Civil and Political Rights and the report containing supplementary information that was submitted in January 1987 provided basic information on Polish legislation adopted between 1979 and 1986 and its application during the period covered by those reports. The second periodic report and the additional report were considered by the Human Rights Committee in Geneva on 26 and 27 March 1987.

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*/ For the initial report submitted by the Government of the Polish People's Republic, see CCPR/C/4/Add.2; for its consideration by the Committee, see CCPR/C/SR.186, SR.187 and SR.190 and Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 40 (A/35/40), paras. 44-75. For the second periodic report submitted by the Polish Government, see CCPR/C/32/Add.9 and 13, and for its consideration by the Committee, see CCPR/C/SR.708 to 711 and Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), paras. 55 to 104.

2. The third periodic report on the implementation of the Covenant by Poland relates to the period January 1987 - April 1990. The legislation adopted during this period is presented with reference to the separate provisions of the Covenant. Relevant statistics and examples of judicial decisions are also provided.

3. The description of Poland's implementation of the Covenant between January 1987 and April 1990 needs to be divided into three distinct periods: January 1987 to January 1989; February 1989 to August 1989; and September 1989 to April 1990.

4. Although during the first of these periods (January 1987-January 1989) there was a decline in repressive activity against the political opposition by comparison with earlier years (following a broad-ranging amnesty law in autumn 1986 which applied to virtually all political prisoners) and although civil rights and political freedoms were violated less often, there was no change in the system by which power was exercised. As a result, no new legislative safeguards of civil rights were adopted during the period and the existing legislation was interpreted arbitrarily in pursuit of short-term political objectives, even if they had to be attained by means contrary to the law in force.

5. It was nevertheless possible during this period, owing to a degree of liberalization as growing numbers of those in power recognized the need to compromise with the opposition on how to govern the country, for organizations still illegal at the time to organize an international conference on human rights from 25 to 27 August 1988 in Mistrzejowice (in Cracow, Nowa Huta district) which was attended by roughly 200 foreigners and by representatives of the State authorities. The Polish Helsinki Committee also began to operate more and more openly, to the point where, between 22 and 24 April 1989, it organized the annual general meeting of the International Helsinki Federation of Human Rights and its representatives were for the first time received by the State authorities. Human rights were also taken up by other organizations illegal at the time, such as the Intervention and Rule of Law Committee of the Solidarność trade union, the "Wolność i Pokój" (freedom and peace) movement, the Polish League for Human Rights, Amnesty International groups, and the Association of Opponents of the Death Penalty. The only body operating legally was the Social Committee on Human Rights, which sought to involve some members of the political opposition in its activities.

6. During the second period (February to August 1989), marked by intense legislative activity as a result of agreements reached during round-table negotiations, the process of changing the country's socio-political system began. Thanks to active mediation by the Roman Catholic Church, contacts were established between the State political authorities and the representatives of numerous opposition circles in a tacit acknowledgement of the right of the majority of society to help to determine their destiny. The conclusions reached set the course of political, economic and social reform laying down specific ways of handling the problems of civil rights and political freedoms. For legal and political reasons, appropriate legislation had to be adopted before Parliament was dissolved and before the new elections, set for 4 June 1989, were held. This period therefore saw the passage of some very important laws from the point of view of the Covenant, such as the new

Associations Act and the Act on Unions of Private Farmers. The law on trade unions was amended, as were the Penal Code, the Code of Misdemeanours and the Code of Criminal Procedure, from which some, though not all, provisions violating civil rights and the right to defence were deleted. Finally, amendments were made to the Constitution and new electoral regulations were issued.

7. The new Act of 7 April 1989 on regulations for elections to the Diet (Journal of Laws, No. 19, item 102), although based on a pre-established division of seats between the coalition in power and the opposition (65 per cent and 35 per cent respectively), was treated from the outset as applying solely to the elections to the tenth Diet. Under the political agreement struck at the round table, the new electoral regulations were to be completely democratic. Furthermore, the Act of 7 April 1989 on regulations for elections to the Senate (Journal of Laws, No. 19, item 103) stipulated free and democratic elections to the Senate.

8. The Act of 7 April 1989 amending the Constitution of the Polish People's Republic (Journal of Laws, No. 19, item 101) ordered basic changes in the system of State bodies, separating the legislative power of the Diet and Senate from the executive power of the President and the Council of Ministers, and from judicial power of the independent courts.

9. Lawmaking remains the province of the Diet, which has the competence to pass legislation. The Senate is a new legislative institution composed of 100 senators, 2 from each voivodship (3 for the voivodships of Warsaw and Katowice). It considers legislation passed by the Diet (it may propose amendments to or the rejection of an Act; Senate proposals can be overruled by a two-thirds majority in the Diet).

10. The Diet and Senate, sitting together as the National Assembly, elect the President of the Republic. The National Assembly is also empowered to declare the President unable to continue to exercise his functions and can arraign him before the Tribunal of State for violation of the Constitution or laws.

11. The President of the Republic of Poland is the supreme representative of the Polish State in its domestic and international relations. His prerogatives include calling elections to the Diet and Senate, proclaiming laws and issuing ordinances further to or in application of legislative provisions, formally moving the appointment and dismissal of the Chairman of the Council of Ministers, exercising the right to grant pardons, and appointing judges at the request of the National Council of the Judiciary. In cases of extreme importance, the President may call and preside over meetings of the Council of Ministers. He is also competent to ratify and denounce international conventions, but ratification of international conventions entailing substantial financial expenditures by the State or necessitating changes in the law requires the prior agreement of the Diet. The President is elected for a six-year term and may be re-elected only once.

12. The Act amending the Constitution of the Polish People's Republic also established the principle of permanent tenure for judges, gave the Civil Rights Spokesman constitutional status, entrusted the general interpretation of the law to the Constitutional Court and allowed voters to nominate candidates directly for election as deputies and senators.

READY

13. The third period (September 1989-April 1990) began with the formation of Prime Minister T. Mazowiecki's new Government, in which most of the posts were given to representatives of the former opposition, chiefly members of the Solidarity movement, the peasant movement and the Democratic Party. The Government was formed by a coalition of these groups within the Diet.

14. The largest number of legislative amendments promoting respect for civil rights and political freedoms were introduced during this latter period. The practical exercise of power vis-à-vis these rights was also radically transformed.

15. The most spectacular changes were the amendments to the Constitution that did away with the provisions on the leading role of the Polish United Workers' Party and the Marxist/socialist nature of the State associated with a planned economy. The rule of law, based on political pluralism and civil rights, was established by the same token.

16. Under the amended Constitution, the Polish State, which has reverted to its former name, the Republic of Poland, is a democratic State ruled by law, in which the people exercise power through their elected representatives in the Diet and Senate. Political parties are voluntary associations which respect the equality of all citizens, and are formed with a view to influencing State policy by democratic means.

17. The most important other legislative changes were a substantial amendment to the Act on the Organization of the Courts of Law, eliminating the influence of the Minister of Justice over the appointment of judges and minimizing his influence over appointments to senior positions within the courts (changes initiated by the Minister pursuant to the round-table agreements) and similar changes made to the laws governing the Supreme Court, the Administrative High Court and the system of military justice. These laws, and the new Act on the National Council of the Judiciary, have shifted the most important prerogatives as regards the appointment and career advancement of judges to the Bench itself.

18. Mention should also be made here of the abolition of censorship and the Office of Religious Beliefs, which was responsible for formulating State policy towards churches and religions and, by the same token, for monitoring them, and the passage of new laws making the Office of the Minister of the Interior, the police and the Office for State Protection subject to controls and restricting the prerogatives of the former Civic Militia and the security services.

19. Finally, preparations are in hand for Poland's accession to the Optional Protocol to the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Working contacts have been established with international non-governmental organizations such as Amnesty International, the Helsinki Federation of Human Rights and Interpol.

20. The legal solutions adopted during these three periods, i.e. between January 1987 and April 1990, are described in detail under the individual articles of the Covenant.

PART II

Article 1

21. Poland bases its relations with other States and peoples on the principles of peaceful coexistence and co-operation, as can be seen from the numerous international initiatives it has taken. Recognizing the right of all peoples to self-determination, it opposes the practice of subordinating economic and scientific co-operation to political considerations and exploiting economic advantages to discriminate against economically less developed countries and hold them in subjection.

22. Poland maintains that international relations should be based on the equality of States and peoples. Today's international circumstances allow for fuller expression of such an intention in political and economic terms, and something that is also fostered by the current independence of Poland's foreign policy.

Article 2

23. Independent courts are particularly important to the protection of rights and freedoms. More comprehensive application of this principle was initiated after the round-table agreements, as reflected in the Act of 20 December 1989 on the National Council of the Judiciary (Journal of Laws, No. 73, item 435) and in the Act of 20 December 1989 amending the Act on the Organization of the Courts of Law, the Act on the Supreme Court, the Act on the Administrative High Court, the Act on the Constitutional Court and the Act on the Organization of Military Courts (Journal of Laws, No. 73, item 436).

24. As early as the second period, the powers of the ordinary courts were broadened in accordance with the round-table agreements. The Associations Act of 7 April 1989 (Journal of Laws, No. 20, item 104) is one example. The approach taken in this Act is discussed in detail in connection with article 22 of the Covenant, but it may be mentioned here that the Act assigns responsibility for all legal decisions on associations to the voivodship courts, allowing appeals to the Supreme Court. The courts of laws have also been made responsible for hearing all cases relating to registration: craft workers' organizations (Handicrafts Act of 22 March 1989, Journal of Laws, No. 17, item 92); workers' self-management associations in economic units (Act of 13 May 1989 on worker self-management in certain economic units, Journal of Laws, No. 35, item 194) and trade associations (Trade Associations Act of 13 May 1989, Journal of Laws, No. 35, item 195). The Act of 7 April 1989 on unions of private farmers (Journal of Laws, No. 20, item 106) transferred the registration of such unions, and the enforcement of legal measures in the event of breaches of the law by the union, to the courts of law.

25. Reference should also be made to the Act of 24 May 1989 on the examination of economic cases by the courts of law (Journal of Laws, No. 33, item 175). The Act did away with the national economic arbitration body responsible for hearing disputes between socialist economic units. Economic disputes stemming from the civil relations between economic units and their activities have now been assigned to the ordinary courts, in which special

sections (economic courts) have been established within the structure of the district and voivodship courts. The jurisdiction of the Administrative High Court was also extended to cover appeals lodged against administrative decisions on the grounds of incompatibility with the law.

26. During the third period, it was decided to adopt more comprehensive arrangements. To begin with, the Government adopted a bill to amend the Code of Administrative Procedure, on the principle that appeals against any administrative decision can be brought before the administrative court. The exceptions to this rule will be few and will be specified; they will relate to cases in which, for important reasons, it is impossible to lay a complaint with the administrative court.

27. Both the literature and judicial precedents reflect the view that the jurisdiction of the courts can be determined by the law alone and it is inadmissible for certain cases to be excluded from such jurisdiction by means of acts enforceable under the law. This view was expressed in the Constitutional Court's ruling of 12 April 1989 (case No. Uw 9/88), a decision in which the Court referred to the provision of the Constitution whereby justice is rendered by the courts, whose jurisdiction is determined by law.

28. In 1989, 13,409 complaints were lodged with the Administrative High Court, in other words 0.8 per cent less than in 1988. They included 2,077 appeals against decisions by supreme or central administrative bodies. In the number of cases heard by the Administrative High Court in 1989, 33.4 per cent were successful (31.7 per cent in 1988) and the Court annulled the decisions or found they were not valid.

29. In 1988, the ordinary courts heard 179,082 criminal cases (a drop of 15.8 per cent compared with 1987), 570,566 civil cases (an increase of 2.6 per cent compared with 1987), 693,033 family law cases, 121,325 labour law cases and 58,060 social welfare cases. In 1989, the courts heard a total of 2,006,308 cases.

30. During this period, the Government also adopted and submitted to the Diet a bill for changes in the methods or hearing cases of misdemeanours. In view of the fact that everyone is entitled to a hearing by an independent court, from the outset there were serious doubts about such cases being heard by misdemeanours commissions, and particularly cases in which it was possible to hand down a sentence of imprisonment or deprivation of liberty. These commissions will now be in the nature of administrative bodies and, like prosecution bodies under this procedure, will come under the Ministry of the Interior. Although a person can, if he is sentenced to imprisonment or deprivation of liberty, demand to have his case heard by a court, proceedings before the commissions raise great doubts about observance of the principle of the equality of the parties.

31. The practice of the commissions was sharply criticised both in regard to substance and in regard to the many cases of failure to respect the right of accused persons to a defence, and also the use of these commissions to move against members of the political opposition. This was helped by the fact that the commissions and militia officials acting for the prosecution in such proceedings both came under the Ministry of the Interior.

32. Pursuant to the new bill already adopted by the Government, the commissions will now be linked not to the government administration bodies but to the courts. They will no longer have the right to deliver sentences of imprisonment or deprivation of liberty, and any of their decisions can be appealed in court. They will thus be connected with the courts of law, rather than with prosecution bodies. In 1989, the commissions heard 373,516 cases (a drop of 36 per cent compared with 1988) and 3,076 cases were examined under a simplified procedure. Moreover, the problem will soon be resolved in the context of the work on reforming the criminal law as a whole. The bill on placing the commissions under the umbrella of the Ministry of Justice is also a step in this direction.

33. As early as the first period, new measures to protect rights and freedoms were taken in the Civil Rights Spokesman Act of 15 July 1987 (Journal of Laws, No. 21, item 123). The Spokesman's main duty is to determine whether, as a result of an action or omission by a body, agency or organization, the rights and freedoms of individuals and the rules of social coexistence and justice have been violated. If he discovers a violation, he may refer to the bodies, agencies or organizations whose activities constitute a violation of rights and freedoms, request judicial or administrative proceedings to be instituted, file applications for special remedies against any judicial decision which has the force of res judicata, submit a petition for a legislative initiative, and file applications with the Constitutional Court. Under the Constitutional Act of 7 April 1989, the Spokesman is appointed by the Diet for four years, with the prior agreement of the Senate. The Act guarantees that he is independent from other State organs.

34. During the first year of his duties (up to 30 November 1988), the Spokesman received 49,173 applications from individuals and, during the second period, 17,895 applications and 29,031 letters. Most of the applications related to the functioning of the system of justice, the prosecution authorities and the misdemeanours commissions, prison conditions (24 per cent of the cases) and problems in labour law and social welfare (also 24 per cent of the cases). It is apparent from reports submitted by the Spokesman to the Diet that he has dealt with broader problems affecting members of the population. For example, in 1988 the Spokesman mentioned the problem of refusal to substantiate decisions denying the issue of a passport. In the case of misdemeanours, the Spokesman has pointed to frequent negligence in regard to proceedings, evidence and the need for strict observance of the principle that the person charged is presumed to be innocent, and he has requested compensation for persons who have been unjustly convicted. The Spokesman has been critical of the 1985 and 1986 Amnesty Acts, which deprive an accused person of the opportunity to appeal to the courts. He has also criticized the culpable implementation in the past of laws and decrees stipulating nationalization of certain immovable property, provisions of the law on population records whereby persons not authorized to stay in premises can be evicted, and restrictions on the public nature of the procedure for awarding scientific degrees and diplomas. Reference should also be made to the Spokesman's activity in 1988 in regard to prison problems, more particularly overcrowding, the use of the inmates' correspondence for educational purposes, the way in which some inmates are classed as dangerous, cases of bad conditions, as well as the low wage for prisoners. The action undertaken by the Spokesman led to the elimination of many irregularities in the way prisons function. The Spokesman particularly cricitized activities

falling within the purview of the Ministry of the Interior (conditions in militia prisons). In the conclusions set out in his second report (December 1989), the Spokesman expressed the opinion that the current activity of many State administration units did not yet point to any awareness of the significance of the Human Rights Covenants. It should be remembered that these administration units have changed very little since September 1989 and that they will be reorganized, and staff changes will be made only after the elections for the local self-management organs scheduled for 27 May 1990 are held.

35. The rights and freedoms of the individual were protected by public prosecutors, under the terms of the Act of 20 June 1985 on the Department of Public Prosecutions of the Polish People's Republic (Journal of Laws, No. 31, item 138). In monitoring observance of the law, in 1988 the public prosecutors examined 142,532 administrative cases (123,359 cases in 1987) and, as a result, filed with the competent bodies 30,296 appeals, including 4,417 applications to vacate judgement and 1,375 complaints lodged with the Administrative High Court. Nevertheless, a critical and warranted appraisal of the Department's activity was one of the reasons for bringing it under the Ministry of Justice, something which was done by the Act of 29 March 1989 (Journal of Laws, No. 20, item 121), on the new rules governing the functioning of the Department of Public Prosecutions.

36. A new method of protecting rights and freedoms lies in the Senate's establishment of a Human Rights and Legality Commission, and one of its tasks is to protect civil rights.

37. Even more important for the purposes of respect for equal rights was the deletion from the Constitution at the end of 1989 (and since September 1989 in actual practice) of the provision on the guiding role of the Polish United Workers' Party. This has made for free access for everyone to executive and other posts, not only in political organizations but also in economic organizations; in addition, social and political organizations are all treated on an equal footing. Similarly, Prime Minister Mazowiecki's principle of "drawing a line" between events before and after the elections on 4 June 1989 has meant that acts of revenge for violations of civil and political rights have been averted, unless the violations are the result of purely criminal acts.

Article 3

38. In Poland, the principle that men and women enjoy equal rights is generally observed. In the present legal system there are no provisions entailing discrimination on grounds of sex. When it was decided to admit only a certain percentage of women in the examinations for admission to the Faculties of Medicine, because of the growing numbers of women in the medical profession, an appeal against such a procedure was immediately lodged with the Constitutional Court. Nevertheless, women's organizations contend that in practice there is some inequality in regard to access by women to some professions and posts and also in regard to salaries and wages.

Article 4

39. During the period under review, no action was undertaken to suspend fulfilment of commitments under the Covenant. The Constitution Amendment Act of 7 April 1989 (Journal of Laws, No. 19, item 101) changed the provisions on declaring martial law or a state of national emergency on part or all of Polish territory. Martial law can be declared if reasons of defence or an external threat to the security of the State so require. A state of national emergency can be ordered for a period of not more than three months in the event of a threat to internal security or of a natural disaster. The legal requirements and consequences and the method of declaring a state of emergency are set out in the National Emergency Act of 5 December 1983 (Journal of Laws, No. 66, item 197), as subsequently amended by the Act of 29 May 1989 (Journal of Laws, No. 34, item 178) for the purpose of bringing the 1983 Act into line with the changes in the Constitution provided for in the Act of 7 April 1989.

Article 5

40. The rules of interpretation set out in this article are observed in Poland.

Article 6

41. The right to life is protected in Poland as the most important of all rights. Respect for this right is also interpreted in Poland as the elimination of any danger to human life, and more particularly danger from war. Drawing on this principle, Poland has thus spoken in favour of arms limitation and taken many initiatives in this direction at the international level.

42. During the 1986-1988 period, the ordinary courts of law handed down the death sentence only in cases of murder (Penal Code, art. 148, para. 1). The number of death sentences is as follows: 13 in 1986, 3 in 1987, and 1 in 1988. No death sentence with the force of res judicata was handed down in 1989. In every case involving a death sentence with the force of res judicata, the Attorney-General submitted the case to the Council of State, together with a formal request for the right to a pardon. The Polish Penal Code rules out enforcement of the death sentence in the case of a pregnant women or a person under 18 years of age. Under the Ammesty Act of 7 December 1989 (Journal of Laws, No. 64, item 390) death sentences were commuted to 25 years' imprisonment. No death sentence has been enforced since 1988.

43. A bill prepared by deputies and intended to do away with the death penalty has been submitted to the Diet during its present term of office. Following the first reading of the bill, it has been referred to the competent commission of the Diet. It is considered that the problem of application of the death penalty will be settled in the reform of the criminal law now under way.

44. In July 1989, the Diet set up an ad hoc commission to consider approximately 100 cases of deaths in mysterious circumstances during the 1982-1988 period. Members of the Civic Militia or security services were accused of being responsible, and the commission is now working on these cases.

45. In December 1989, seven prisoners died in the course of prison riots and more than 350 were injured. According to the findings of an ad hoc commission to look into events at the prisons and the findings of the Department of Public Prosecutions, in the Czarne prison four prisoners died as a result of knife and other wounds, probably inflicted by other inmates, and two others died from gunshots; in the Golienów prison one prisoner was lynched by others. A criminal inquiry was initiated to establish the facts and the causes of the deaths. The direct reason for the prison riots was the inmates' discontent about the scope of the Amnesty Act of 7 April 1989, which does not apply to persistent offenders.

46. Deputies also prepared a bill submitted to the previous Diet on legal protection of unborn children. The bill was intended to repeal the Act of 27 April 1956, on admissible termination of pregnancy (Journal of Laws, No. 12, item 6, with later amendments) and stipulated a complete ban on termination of pregnancy. The bill was submitted to a referendum and led to considerable differences of opinion. During its present term of office the Diet has not yet considered the problem, which will none the less be settled during the work on the reform of the Penal Code.

Article 7

47. On 9 June 1989, Poland ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984. In the course of the ratification procedure, it was established that the Polish legal system contained measures that guarantee the implementation of the provisions of the Convention in Poland. Ratification took place without any reservations being entered, thereby signifying recognition of the mandatory jurisdiction of the International Court of Justice in the event of disputes concerning the interpretation or application of the Convention. Additional guarantees concerning respect for the commitments stemming from the Convention will be set forth in the new Penal Code and the Code of Criminal Procedure.

48. During the period preceding September 1989, citizens were subjected to ill-treatment by members of the Civic Militia and security services during demonstrations and in police stations, although less frequently than in the period covered by the second report. After September 1989, such incidents were the exception, one of the reasons being, inter alia, the possibility of protesting against abuses of authority by officials coming under the Ministry of the Interior and the entry into force, with effect from 1 October 1989, of the Act of 29 May 1989 which allows for a court appeal in the event of wrongful arrest by the organs of the Civic Militia. Such an appeal to the courts must be considered at once and any irregularities are brought to the attention of the higher organs (this question is discussed in detail in article 9).

49. Nevertheless, prisoners were ill-treated by members of the prison service in December 1989, after the prison riots had been quelled. In these cases, criminal or disciplinary proceedings were instituted against 82 prison service officers, as a result of which nine including two prison governors, were suspended from duty. The disciplinary proceedings against 30 officers have been concluded (four have been dismissed from the service).

Article 8

50. The legal provisions in force no longer restrict graduates in the free choice of their place of employment. Under the Ordinance of the Council of Ministers of 8 August 1988, amending the Ordinance on the rules for the organization and financing of practical vocational training and the payment of education costs by enterprises employing persons who have graduated from trade schools (Journal of Laws, No. 29, item 201), the conditions for meeting the education costs of graduates by enterprises have been eased.

51. However, it was only during the third period that the Act of 26 October 1982 on persons evading employment was repealed by the Employment Act of 28 December 1989 (Journal of Laws, No. 75, item 446). The former had stipulated, albeit indirectly, the obligation to work. All restrictions in respect of persons applying, on an individual basis, for employment abroad have also been repealed; this matter is not at present regulated by law.

Article 9

52. Following the "round table" agreements, the legal provisions concerning arrest and pre-trial detention were amended. Under the Act of 29 May 1989 on the amendment of certain provisions of the criminal law, the law on misdemeanours and other laws (Journal of Laws, No. 34, item 380), the procedural guarantees of persons arrested and temporarily detained have been extended. This Act introduced changes in the provisions of the Code of Criminal Procedure regulating the rules and the procedure for making an arrest (arts. 206 and 207 (a) of the Code of Criminal Procedure) and of pre-trial detention (art. 222), as well as in article 7 of the Act on the Office of the Minister of the Interior and on the scope of activities of his services (Journal of Laws, No. 38, item 172). It entered into force on 1 October 1989.

53. The changes include a provision which states that, if the Civic Militia arrests a person suspected of committing an offence or misdemeanour, the date and reason for the arrest must be recorded in writing. Such a report is communicated to the suspect together with information about his right to appeal to the courts. At his expressed request the person closest to him, any other person indicated by him or his employer or place of study must also be informed of his arrest. The person under arrest may appeal to the local court at the place of his arrest, and the court shall hear the appeal without delay. If the arrest is unfounded, the court orders the immediate release of the person under arrest and informs the organ exercising supervision over the organ which made the arrest, of its decision. In the case of an obviously unfounded arrest, the person arrested may claim compensation from the Treasury for the injury he has suffered.

54. The rules relating to arrest also applied to someone arrested under article 7, paragraph 1, subparagraph 3 of the Act of 14 July 1983 on the Office of the Minister of the Interior. An arrest could be made if the suspect disturbed or threatened public order. However, such a ground for arrest was criticized; in the new legislation of 7 April 1990 on the Office of the Minister of the Interior and on the police, changes were introduced in that regard. Apart from the grounds for arrest laid down in the Code of Criminal Procedure, under the draft law on the police a person can be arrested only if he obviously constitutes a threat to human life or health as well as to property.

55. The amendments introduced by the law of 29 May 1989 in respect of the application of pre-trial detention provide mainly for an extension of the court's jurisdiction. The prosecutor can only order pre-trial detention for a period not exceeding three months (the prosecutor's decision may be appealed in court). If the preparatory procedure cannot be completed within that period, due to the exceptional circumstances of the case, an extension of the period of pretrial detention by up to one year may be decided only by the court having jurisdiction over the case. A further extension of the pre-trial detention may be decided only by the Supreme Court, at the request of the Attorney-General, in exceptional and wholly justified cases for a specific period, needed to complete the investigation. The court's decision on extension of the period of pre-trial detention may be appealed at second instance.

56. The possibility that the courts alone will have the authority to order pre-trial detention is being envisaged in the context of the ongoing reform of the criminal law.

57. Pre-trial detention is currently applicable to perpetrators of serious offences, but in the past was also applied in political cases. In 1988, 33,853 persons (10,673 persons in 1989) were committed to prisons and penal institutions by orders issued by the investigating organs. At the end of 1988, 2,937 persons (2,654 persons in 1989) were in pre-trial detention for a period of three to six months and 1,858 persons (1,593 persons in 1989) were in pre-trial detention for over six months. In 1988, the courts heard 5,349 appeals against the decisions of prosecutors to order pre-trial detention, 532 of which were successful (in 1989 the courts heard 4,412 appeals, 441 of which were successful). Pre-trial detention is cancelled or replaced by a more lenient measure if the circumstances that warranted it no longer exist (in 1988 pre-trial detention was cancelled in the case of 2,899 persons, accounting for 10.5 per cent of the total number of persons in pre-trial detention, and in 1989 in the case of 2,399 persons. The percentage of cases of pre-trial detention revoked in 1988 shows that this measure was applied too hastily. In 1989, pre-trial detention was applied to a lesser degree, although there was an increase in crime.

58. The legal provisions currently in force do not stipulate the obligatory application of pre-trial detention during the preparatory proceedings. On 30 June 1988 the Act of 10 May 1985 on special criminal responsibility (Journal of Laws, No. 23, item 101), which provided for obligatory application of pre-trial detention if the act with which the defendant was charged constituted a crime or a repeated offence, was repealed.

59. In assessing the application of pre-trail detention, it is important to compare the number of persons held in pre-trial detention in respect of whom proceedings were dismissed or who were acquitted and the total number of persons subjected to this measure. In 1988, this coefficient was 1.6 and in 1987 it was 1.7.

60. In the context of the ongoing reform of the criminal law, it is expected that in cases of misdemeanour, the court alone will have the authority to hand down a custodial sentence. In 1988 the misdemeanours commissions handed down the main penalty of detention in respect of 1,925 persons and in 1989 in respect of 334 persons. It should also be mentioned that, as a result of non-payment of the fine ordered by the bureau, this penalty was commuted to a sentence replacing imprisonment in the case of 9,344 persons.

61. The Government has begun work on a bill on protection of mental health. The fundamental component of this law is the creation of guarantees for the protection of the rights of persons confined in psychiatric hospitals. One of the main guarantees will be the case law of the courts in this matter.

Article 10

62. The work on reforming the criminal law, referred to in the second report, is moving ahead. The reform will also encompass the Penal Executive Code which regulates, inter alia, the principles for serving a custodial sentence. The reform, which has been much more far-reaching since September 1989, envisages, inter alia, determining the status of an individual in custody by means of a definition of his rights and obligations, with due consideration given to the United Nations Standard Minimum Rules, the ensuing individualization of relevant methods and measures of social rehabilitation, particularly as regards young offenders, women and perpetrators of involuntary offences, strengthening of the role of the prison tribunals and judges during the execution of the sentence, mitigation of the effects of isolation and improvement in the inmates' living conditions.

63. Anticipating the preparation of a new Penal Executive Code, on 23 February 1990 the Diet adopted a law amending the Penal Executive Code. Under the changes brought about by this law, work done by a prisoner is placed on an equal footing with work done in freedom, prisoners are guaranteed a wage for their work and the disciplinary measure known as the "hard bed" is abolished. Prisoners have acquired the right to appeal to the prison tribunal against a decision by the administration of the penal establishment.

64. The Ordinance of the Minister of Justice of 2 May 1989 on the regulation for the execution of a sentence of deprivation of liberty (Journal of Laws, No. 31, item 166), which entered into force on 1 October 1989, also addresses this issue. The Ordinance has replaced the 1974 temporary regulations on serving a custodial sentence. The new regulations provide for considerable liberalization in the arrangements concerning young offenders, women and perpetrators of involuntary offences, as well as prisoners with mental disorders, alcoholics, drug addicts or disabled persons. Nevertheless, these changes are still considered to be insufficient.

65. It is anticipated that young offenders will serve their sentences mainly in semi-open establishments. Adult prisoners without criminal records who have committed offences unintentionally may well be incarcerated with young offenders. Young persons may receive a larger number of visits.

66. The general rule is to avoid subjecting women to vigorous treatment while serving their sentence and of having them serve the sentence in a semi-open penal establishment. Women prisoners are entitled to wear their own clothing and underclothing, to decorate the inside of their cells and to decide freely on their external appearance. The disciplinary measure of deprivation of visiting rights may not be applied to them. They may look after their children under the age of three in kindergartens organized in the vicinity of penal establishments and avail themselves of the facilities provided for contacts with their older children.

67. Prisoners who have committed involuntary offences serve their sentences in special work centres. Many rights allowing contact with the outside world are available to them.

68. The new regulations increase the prisoner's pay for his work, provide new privileges (telephone calls to relatives and visits of up to 24 hours outside the penal establishment) and restrict punishments under the rules (abolition of the exercise period carried out in isolation and withdrawal or limitation of the right to receive mail). Receiving food parcels from the outside has been defined as a prisoner's right rather than privilege.

69. The situation of people in pre-trial detention is regulated by the Ordinance of the Minister of Justice of 2 May 1989 on the rules for pre-trial detention (Journal of Laws, No. 31, item 167) which also entered into force on 1 October 1989. In conformity with the principle of the presumption of innocence, the Ordinance prescribes only such restrictions on the rights of persons held in pre-trial detention as are necessary to maintain order and security in the prison, in order to prevent the mutual demoralization of prisoners and to guarantee that the criminal proceedings are conducted properly. A person held in pre-trial detention has the right to have personal effects in his cell, including items necessary for religious worship. The daily ration of food may not be less than 3,200 calories. A prisoner who is paid for his work in prison receives 100 per cent of his pay, unless he continues to receive remuneration from his previous employment (in such a case he receives 50 per cent of the wage earned by him in prison). He may wear his own clothing and shoes, may purchase food and tobacco with the money which has been deposited and may receive a food parcel from outside weighing up to 5 kilos once a month. The regulations limit to a strict minimum the disciplinary measures that may be applied against such a person for the deliberate infringement of obligations and prohibitions set out in the rules and regulations in force in the prison.

70. Since 1986, when 116,000 persons were held in penal establishments and prisons, the number has declined steadily and this trend is continuing. According to the statistical data, on 30 November 1988 there were 70,387 persons in penal establishments and prisons, including 12,477 persons in pre-trial detention, 55,518 convicted persons and 2,392 persons serving sentences for misdemeanours. The largest group was made up of 29,555 recidivists; there were also 1,763 women. On 30 June 1989, the prison population stood at 59,408 persons, including 48,007 convicted persons, 9,880 persons in pre-trial detention and 1,121 persons serving sentences for misdemeanours. After the adoption of the Amnesty Act, at the end of December 1989, that population fell to only 40,321 persons. Following the implementation of the Amnesty Act of 7 December 1989, by 31 January 1990, 12,673 persons had left penal establishments and prisons. The sharp fall in the number of persons in penal establishments and prisons has made it possible to adopt accommodation standards calculated according to surface area (3-4 m^2 per person) instead of according to space (7-10 m^3 per person) applied hitherto.

71. Another important problem is the responsibility of Prison Service officials vis-à-vis the observance of legal provisions and official regulations. In 1987, disciplinary penalties were imposed on 1,363 officials (the most severe penalty - dismissal - was imposed on 94 officials; criminal

proceedings were instituted against 13 officials). In 1988, 1,090 officials were punished, including 62 who were dismissed and 5 who were prosecuted; in 1989, penalties were imposed on 767 officials, including 45 who were dismissed.

72. Within their field of competence, the prison judges and prosecutors supervise the execution of custodial sentences and pre-trial detention, together with respect for the rights and obligations of prisoners. In 1988 (up to December) judges made 95 on-the-spot inspections (138 in 1987). One of the effects of the supervision by the judges was the annulment or amendment, in 1987, of 810 decisions reached by the prison commissions. It should be added that, irrespective of the inspections, prison judges and prosecutors interview prisoners as part of their examination of cases of early conditional release in penal establishments. Prisoners' complaints and requests mainly concern disciplinary penalties, medical attention, conditions of employment and accommodation. In 1987, prosecutors inspected 136 establishments, including 46 local prisons (in 1988, 130 establishments, including 56 local prisons).

73. The supervision of prisons by judges and prosecutors was considered to be insufficient, and changes in this area were introduced by the Act of 23 February 1990 amending the Penal Executive Code.

74. During the period May-July 1988, representatives of the Civil Rights Spokesman visited six penal establishments. They were accompanied by Deputies in the Diet, specialists, and representatives of the founding group of the Social Committee on Human Rights in Poland. During these visits, 216 prisoners (chosen by lot) were interviewed in private and 570 complaints were received directly. The Civil Rights Spokesman presented his conclusions to the Diet Commission on Administration, Internal Affairs and Justice and to the Minister of Justice. Reference was made in his report, inter alia, to poor prison accommodation, inadequate medical attention in some cases (lack of qualified medical personnel), overcrowding and insufficient pay for work by prisoners. Mention was also made of the fact that the employment of prisoners in penal establishments was not regarded as a labour contract, which means this period of employment is not taken into account for the purposes of entitlement to retirement, pensions and other benefits (this question has already been resolved through the amendment of the Penal Executive Code by the Act of 23 February 1990). The prison authorities have begun to make some changes in response to the report by the Civil Rights Spokesman, but conditions of accommodation in penal establishments have not improved sufficiently, a fact which was noted in the course of the inspections of these establishments made in autumn 1989 following protests by prisoners. On the initiative of the Civil Rights Spokesman, it has been agreed that prisoners' complaints concerning inadequate medical attention will be examined by experts from the ordinary medical services.

75. At present, as a result of the establishment of the medical boards as self-managing organs, the doctors employed in penal establishments are subject to supervision by these boards. This has proved essential because the professional qualifications of many doctors working in prisons have declined and their attitude towards prisoners has not always been as it should be.

76. In his report of February 1989, the Civil Rights Spokesman also raised the question of local prisons under the authority of the militia.

77. Since 1 November 1956, penal establishments and local prisons for persons under pre-trial detention have been subordinate to the Ministry of Justice. However, the Penal Executive Code has admitted an exception to this rule in that, pending the establishment of an appropriate number of local prisons, the prosecutor may order a person under pre-trial detention to be placed for a period not exceeding three months in a local prison of the Civic Militia, of the armed forces for the protection of frontier regions or of the military services for the interior. Exceptionally, in accordance with a decision by the prison judge, persons serving a custodial sentence may also be placed in such prisons. It has been found that this rule has not been complied with since the number of local prisons subordinate to the Ministry of Justice has been decreasing while the number of militia prisons has been increasing. In February 1989, the Civil Rights Spokesman, accompanied by deputies and by his employees, made inspections of militia prisons in seven voivodships. In the course of these inspections it was found that conditions of accommodation in these prisons were poor, three persons had been held in custody beyond the time-limit of 48 hours, and obvious preference was given to the protection function of pre-trial detention. A voluminous report on this question, together with conclusions, was submitted to, inter alia, the Minister of the Interior and the Minister of Justice. The implementation of all the changes recommended in this report was supported by the Social Committee on Human Rights in Poland in its statement addressed to the Minister of Justice, the Minister of the Interior and the Attorney General.

78. As a result of this report, on 4 August 1989 the Attorney General issued directives limiting the number of persons under pre-trial detention held in militia prisons in towns where there are local prisons subordinate to the Ministry of Justice.

79. The problem of militia prisons was resolved once and for all through the above-mentioned Act of 23 February 1990 amending the Penal Executive Code, which provides for them to be abolished within three months of the Act's entry into force.

80. Before September 1989, the approval of social supervision of the functioning of penal establishments and the participation of social organizations in the execution of custodial sentences were only verbal in nature. Although the ordinance of the Minister of Justice of 2 May 1989 on regulations for the execution of custodial sentences already approved the establishment of social prison councils in penal establishments and provided for the participation in the social rehabilitation process both of prisoners and of institutions and organizations which statutorily provided assistance to prisoners or their families, social supervision was restricted to ineffective forms because access by independent persons to penal establishments was strictly controlled. It was only after September 1989 that favourable conditions were created for the activity of organizations truly engaged in the work of assisting prisoners. Among these organizations, reference should be made to the Prison Patronage Association, which has resumed its activities.

Article 11

81. In Poland, no one may be imprisoned merely on the grounds of non-fulfilment of contractual obligations.

Article 12

82. Everyone resident in Poland has the right to travel freely in the country and freely to choose his residence.

83. The legal provisions on passports in force in Poland have not been amended as regards the conditions of issue of passports authorizing Poles to travel abroad and to return from abroad. It was not until April 1990 that the Government adopted a passports bill establishing a general right to possess a passport, with expressly-defined exceptions and the possibility of appeal to the Administrative High Court against a refusal to issue a passport. By 1989, however, the practice was established of issuing a passport to any person wishing to travel abroad. Provision has also been made for the right of passport holders to keep a valid passport for up to 10 years at their home.

84. According to the Statistical Yearbook, in 1987, 36,400 persons emigrated from Poland (29,000 persons in 1986). In 1987, 5,229,000 persons travelled abroad as tourists (4,313,000 in 1986). In 1988 Polish tourists travelling abroad numbered 6,959,831 and 27,378 persons left Poland to settle permanently in another country. The main reasons for emigration are economic.

85. In 1988, the competent authorities refused to issue a passport in the case of 0.9 per cent of applications (0.2 per cent in 1989).

Article 13

86. The legislative provisions governing aliens' right of sojourn in Poland have not been amended. The difficulties connected with the right of Poles domiciled in the Soviet Union to secure permanent residence in Poland constitute a considerable problem. Poland has provided appreciable assistance to refugees from the German Democratic Republic and, in April 1990, to refugees from Arab countries.

Article 14

87. The Constitution Amendment Act of 7 April 1989, stemming from the "round-table" agreements, introduced changes with regard to the administration of justice. Apart from granting constitutional rank to the principle of permanent tenure for judges, which has already been mentioned, the election of judges to the Supreme Court has been terminated (hitherto they were elected to the Court for five years) and a new judicial organ has been established - the National Judicial Council. It was only during the third period that the prerogatives, composition and method of operation of this Council were defined, under an Act of 20 December 1989. In accordance with the provisions of the Act, the principal function of the Council is to submit applications concerning the appointment of judges. The reason underlying the establishment of the Council was the decision that it was to be an organ composed mainly of judges elected by the General Assembly of Judges and of deputies and senators. The Minister of Justice represents the Government on the Council, which is also competent in matters concerning the professional advancement and transfer of judges and general questions concerning the administration of justice and legality.

88. The Act of 20 December 1989 also made numerous changes in the organization of the Supreme Court, the Administrative High Court, the ordinary courts and the Constitutional Court. The changes comprise an extension of the competence of the judges' self-management organs and a considerable limitation of the competence of the organs responsible for judicial administration, including the Ministry of Justice and court presidents, in particular as regards the appointment and professional advancement of judges. At present, candidates for the office of judge are presented to the National Judicial Council directly by the General Assembly of Judges, a procedure which makes judges completely independent of the State administrative apparatus; this also applies to military court judges. In addition, the "guarantee" of the adequate performance of a judge's functions as a condition for the appointment and termination of judges has been abandoned. Because of this condition, the organ appointing the judge had to decide whether he provided the necessary guarantees of the adequate performance of the functions of judge and it could remove the judge if it considered that he no longer provided guarantees of the adequate performance of his functions. This solution was criticized as being contrary to the principle of the permanent tenure and independence of judges, since it constituted a basis for an evaluation of a political character. Moreover, after 13 December 1981 it served as a basis for the removal of several dozen judges. The new solutions adopted in this area provide for the right of the panel ruling in the case to put to the Constitutional Court legal questions concerning the conformity of legislative acts with the Constitution, thus making it independent of the opinions of court presidents, and rescind the directives on the administration of justice and judicial practice formulated by the Supreme Court, which limited judicial precedence and replaced the laws. Judges have also been strictly forbidden to be members of political parties, which might influence the judicial decisions they hand down, or to engage in political activity. This ban also applies to military court judges, who in the past were almost all members of the Polish United Workers' Party.

89. As at 31 December 1988, there were 1,234 Voivodship Court judges, 2,841 district court judges and 694 assessors in the latter courts. In the Administrative High Court there were at that time 86 judges (94 judges in 1989). During the period 1989-1990 no judge was removed. However, during both the first and second periods referred to at the beginning of this report, there were numerous cases of judges leaving the profession (in 1988, for example, 132 ordinary court judges and 1 Administrative High Court judge relinquished office).

90. The National Judicial Council Act has also provided for the possibility of the reappointment, by means of a simplified procedure, of judges removed from their posts or obliged to resign for political reasons; 40 persons have availed themselves of this possibility.

91. The above-mentioned Act of 29 May 1989 amending certain provisions of the criminal law, the law on misdemeanours and other legislation also amended the provisions of article 64 of the Code of Criminal Procedure governing the regulations relating to communication between persons under pre-trial detention and their defence counsel. Until this Act entered into force (on 6 June 1989), prosecutors, at the preparatory procedure stage, had the right in exceptional cases to refuse to allow a person under pre-trial detention to communicate with his defence counsel in private or by

correspondence. This right which was often used to excess, has been done away with. In accordance with the new legal provisions, the prosecutor may merely reserve the right to be present himself or to designate a person to be present at the time of the interview between the detainee and his defence counsel. Any reservation to this effect by the prosecutor is open to appeal to the court competent to try the case.

92. This question is also covered by paragraph 35 of the above-mentioned Ordinance of the Minister of Justice of 2 May 1989 establishing regulations relating to pre-trial detention, which also stipulate that the person under such detention has the right to communicate with his defence counsel or legally qualified plenipotentiary in private or by correspondence. In addition, an alien under pre-trial detention may communicate by correspondence with the competent consular office or, in the absence of such an office, with the competent diplomatic mission, and communicate by correspondence or during visits with a consular officer or diplomatic agent.

93. The accelerated procedure, whose scope was extended under the Act of 17 June 1988 amending certain provisions of the criminal law (Journal of Laws, No. 20, item 135), constitutes a considerable restriction on the guarantees relating to the defendant's trial and has been widely criticized. It has been deleted from the draft code of criminal procedure currently being formulated.

94. The possibility for a defendant to be assisted by a defence counsel in the context of an accelerated procedure is guaranteed by the Ordinance of the Minister of Justice of 18 August 1988 on the defendant's right to be assisted by counsel of his choosing under the accelerated procedure (Journal of Laws, No. 28, item 198), which was issued after consulting the Supreme Bar Council. However, legal defence in this situation remains very difficult, since examination of the case following the arrest of the perpetrator flagrante delicto or immediately afterwards is rapid, and many procedural guarantees are omitted.

95. There has been a favourable development with the adoption of the Act of 20 December 1989, which amended the Military Courts Organization Act by abolishing the restrictions on the participation of lawyers in proceedings before military courts.

96. The above-mentioned Act of 17 June 1988 amending certain provisions of the criminal law and the law on misdemeanours transferred to the Code of Criminal Procedure the committal procedure previously applied under the Special Criminal Responsibility Act of 10 May 1985. The court may issue a committal order in the case of an offence which can be tried under a simplified procedure or of an offence punishable by a custodial penalty or a statutory fine. If the defendant objects, the order is quashed and the case is tried under an ordinary procedure. This undoubtedly controversial solution gives the defendant a choice between the possibility of examination of the case by the court or accepting the penalty imposed in the order, which is generally lighter.

97. As at 31 December 1988, the Polish Bar comprised 6,693 lawyers, of whom 3,846 were practising in 413 organized groups of lawyers, 118 were practising in private offices, 1,316 were working in another capacity (mostly as legal advisers or university teachers), 1,413 were retired and 506 were trainees. The number of lawyers with their own offices is increasing. In 1989, 170 lawyers were working in private offices out of a total of 6,831 lawyers, comprising 3,870 practising in organized groups.

Article 15

98. The rules of criminal responsibility set forth in this article of the Covenant are observed in Poland.

Article 16

99. The principles underlying the recognition of everyone as a person before the law were outlined in the first and second reports concerning implementation of the provisions of the Covenant. These principles are observed in Poland.

Article 17

100. The Polish legal system comprises guarantees of protection against any arbitrary or unlawful interference with privacy, the family, the home or correspondence, and against any unlawful attack on one's dignity or honour. Details of this protection were given in the previous reports.

101. The Civil Rights Spokesman has noted the violation of the privacy of correspondence in prisons through the use in internal prison radio programmes of information contained in prisoners' correspondence. As a result of his intervention, the Central Prison Administration has forbidden this practice.

102. Quite recently, there have been cases of unlawful opening of correspondence, telephone-tapping and bugging, cases which have come to light as a result of discoveries in a number of hotels. At present, in accordance with the provisions of the Police Act of 6 April 1990, in operational activities not governed by the Code of Criminal Procedure, the monitoring of correspondence and the use of technical means to obtain information in a clandestine manner are possible only in the case of very serious crimes and they require the prior authorization of the Government Attorney, which is given at the formal request of the Minister of the Interior.

Article 18

103. During the first and second periods, freedom of conscience and freedom of religion were restricted in view of the legal obligation to educate children and young people, through State institutions, in a socialist spirit, with preference for the so-called scientific philosophy, in other words, dialectic and historical materialism; at the same time youth organizations could only be organizations of a socialist character. During the third period, on the other hand, there was a considerable improvement in respect for these freedoms, as a result of the weakening of the State's ideological function and the philosophical pluralism of persons acceding to positions of authority.

104. As early as the second period, however, the Act of 17 May 1989 on guarantees of freedom of conscience and religion (Journal of Laws, No. 29, item 155) was adopted. In regard to the right of individuals to freedom of conscience and religion, it provided many guarantees and established the right of free association according to religious persuasion. The Act reflects not only the provisions of the Covenant, but also those of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly of the United Nations on 25 November 1981, and the Final Document of the Vienna Meeting of the Conference on Security and Co-operation in Europe, adopted on 19 January 1989.

105. The Act guarantees aliens and stateless persons rights equal to those of Polish citizens, with two exceptions: one is the right to appoint aliens to senior posts in the Church or other religious entity; and the other is the possibility of founding a Church or other religious entity.

106. In this connection, attention should primarily be drawn to the legislative regulation of the right to take part in religious practices and to possess objects required for the practice of worship by persons performing military service, persons resident in medical or social-assistance establishments, and persons held in prisons, correctional establishments or other penal institutions.

107. In accordance with article 1 of the Act, freedom of conscience and religion comprises the freedom to choose a religion or belief and freedom to express that choice individually or in community with others, either in private or in public. Believers of all faiths and non-believers have equal rights in State activities and political, economic and cultural activities.

108. In exercising freedom of conscience and religion, each person may, in particular, found, join or refrain from joining Churches or other religious entitites, participate in religious activities and ceremonies, engage in worship and celebrate religious festivals, preach his religion or faith, bring up his children in accordance with his religious philosophy, maintain privacy in matters of religion or belief, maintain contacts with other believers, including participation in the activities of international religious organizations, manufacture and obtain objects used in worship or religious practices and use such objects, and associate with secular organizations with a view to the attainment of the objectives deriving from religious faith or belief.

109. Individual or group expression of a religion or belief is subject only to the legal restrictions essential for the preservation of public safety, order, health or morals, or the rights and freedoms of others (art. 3, para. 1, of the Act in question).

110. The Act excludes religious faiths from the scope of the Associations Act. Churches or other religious entities are founded simply by means of a declaration and an entry in the relevant register. Since the previous report (1986), the status of 14 Churches and faiths has been determined. At present, there are no longer any illegal faiths. Decisions reached on Churches and faiths may be appealed to the Administrative High Court. The determination of the legal status of particular Churches and faiths in Poland is traditional in character and concerns, apart from the Roman Catholic Church, nine other Churches or faiths. The others have been

recognized following their entry in the register. However, the rights of all Churches and faiths are equal, regardless of the means of determination of their legal status. This distinction through two forms of recognition is aimed solely at facilitating the legal determination of the status of new faiths.

111. The same Act on guarantees of freedom of conscience and religion has, inter alia, amended the Act of 15 July 1961 on the development of the system of education and training, which provided solely for a socialist education, stipulating that the purpose of the activity of schools and other educational establishments was to educate pupils in the spirit of freedom of religion and belief, patriotism, peace, freedom, social justice and fraternity with all peoples of the world.

112. Another very important law concerning freedom of conscience and religion is the Act of 17 May 1989 on the attitude of the State towards the Roman Catholic Church in Poland (Journal of Laws, No. 29, item 154); most Poles are members of this Church. The new Act governs a whole range of matters relating to the activity of the Church, with the exception of those that are to be covered by a treaty between Poland and the Holy See. Provisions corresponding to the provisions of this Act which apply to freedom of conscience and religion exist in all laws concerning particular Churches or faiths, in conformity with the principle of the equality of all faiths.

113. As regards constitutional guarantees of the protection of health and assistance in the event of sickness or unfitness for work, the ministers of all Churches and faiths are covered, at the request of the Roman Catholic Church and other Churches and faiths, by the social security system. This question has been resolved by the Act of 17 May 1989 on social security for ministers of religion (Journal of Laws, No. 29, item 156).

114. Apart from the legal provisions, attention should be drawn to the practical activity of Churches and faiths and, in particular, to developments in the construction of religious buildings throughout the period covered by the report (1987-1989). For example, 1,004 buildings belonging to the Roman Catholic Church and 106 buildings belonging to other Churches or faiths were being constructed or reconstructed early in 1988.

115. In addition, the period since September 1989 has seen an increase in the number of Church publications and the abolition of the practice of censorship of such publications (even before the official abolition of censorship). Such censorship had in the past often caused great distress and even applied to speeches by the Pope.

116. The Act of 13 July 1988 amending the General Obligation of Defence Act (Journal of Laws, No. 24, item 171) has provided for community service as an alternative to military service. Persons called up for military service (ordinary service in civil defence or long-term military training) may, for reasons of religious or moral objection, ask to perform community service. This service consists, in peacetime, of work aimed at furthering environmental protection, social assistance or communal interests. Community service lasts 36 months and, in the case of persons who have completed higher education, 24 months. The persons concerned are not covered by a labour contract with the employer's enterprise where the community service is

performed, but certain provisions of labour law apply to them. This Act may in the future be amended with a view to refining the rules governing alternative service.

117. As at 30 April 1990, 3,073 persons had successfully applied to perform community service.

Article 19

118. Attainment of the conditions required by this provision of the Covenant during the period covered by the present report has been very varied. During the first period (January 1987-January 1989), prior censorship, although less punctilious than in previous years, very often affected all forms of communication of information and opinion (books, press, films, theatrical performances, etc.), while the extent of the deleted text depended on where and by whom it had been published. Censorship often went beyond the bounds specified by law and, in particular, certain opinions expressed were deemed to have the character of an offence although, even under the provisions of criminal law in force (considerably limiting the right to possess and disseminate information), they were not of such a character. The provisions of criminal law already more rarely used for the purposes of punishing persons who disseminated information that was embarrassing to the authorities were used (wrongfully) to attain political objectives by means of prior censorship based on prohibition of the dissemination of false information (Penal Code, arts. 271 and 273 (1)), and even on the prohibition of acts preparatory to such an activity (ibid. art. 273 (2)) and on the prohibition of the dissemination of true information that was liable to cause a public disturbance or rioting (ibid. art. 282 (a)).

119. In 1987, 2,552 newspapers or periodicals were subjected to censorship; in 1988 the figure was 2,528. At the same time, there were many restrictions of an administrative or criminal character that made it impossible for books or newspapers to be published without the prior authorization of the censorship office, which was very restrictive in its decisions.

120. Under the Cinematography Act of 16 July 1987 (Journal of Laws, No. 22, item 127), State agencies were granted broad rights with regard to the possibility of regulating this activity. The Act regulated all activities relating to the production and distribution of films and the promotion of cinematographic culture, and also established regulations on organization and finance, and regulations on the exercise of professions in the film industry. In relation to previous legislative acts on this question, the new Act made few changes, leaving the administrative authorities exclusive competence to take decisions on matters regarding the production and distribution of films.

121. It was not until the second period that positive changes took place. They consisted mainly of the amendment of laws relating to the press, the control of publications and productions, and Customs questions.

122. The Act of 30 May 1989 amending the Press Act (Journal of Laws, No. 34, item 187) did away with the requirement of prior authorization by the Central Office for the Control of Publications and Productions for the publication of a newspaper or periodical. In accordance with the conditions in force since 6 June 1989, the publication of a newspaper or periodical was subject to registration with the Central Office. The publication of a newspaper or

periodical could commence if the registering body had not responded within a period of 30 days of the formal application for registration. This body could refuse registration only if such registration would constitute a violation of the provisions of the Press Act or the right to protection of an already existing title of a press organ. Registration could be cancelled in the case of systematic or flagrant violation of the provisions of the Press Act, but had to be preceded by a written warning specifying the violations noted. These rules were also applied with respect to radio stations and internal television and radio networks not owned by the State.

123. The most important changes in the Act of 29 May 1989 amending the Control of Publications and Productions Act (Journal of Laws, No. 34, item 186) concerned the determination of conditions justifying intervention by the control bodies. In accordance with the new regulations, in conformity with article 2 of the Control of Publications and Productions Act, in the exercise of freedom of speech and freedom to express one's ideas in publications and productions, the following actions were prohibited:

Jeopardizing the independence and territorial integrity of the Republic of Poland;

Inciting others to overthrow, insult, mock or ridicule the constitutional system of the Republic of Poland;

Attacking the constitutional principles of the foreign policy of the Republic of Poland or its alliances;

Engaging in war propaganda;

Divulging information constituting State secrets, in particular economic secrets or professional secrets relating to national defence or the armed forces;

Inciting others to commit offences or praising others for having committed offences;

Attacking religious beliefs or the feelings of non-believers;

Propagating ethnic or racial discrimination;

Advocating morally harmful practices, such as alcoholism, drug addiction, cruelty or pornography.

124. During this period, the censorship of texts subject to prior control - taking account of the growing number of newspapers and periodicals - continued to decline in relative terms, although many actions still went beyond the framework permitted by law, for the censorship offices interpreted broadly the bans established by the Act in question.

125. The adoption of the regulation providing that individuals could also subscribe to and import one copy of periodicals and books published abroad, as well as films, magnetic tape and other publications, despite the continuing prohibition on the dissemination of such material and publications (amended art. 16 of the Control of Publications and Productions Act) is also of

considerable importance. Such a regulation was also provided for in the Customs provisions, under the Act of 13 May 1989 on the amendment of Customs law (Journal of Laws, No. 35, item 193).

126. Mention should also be made of the changes to the Penal Code and the Code of Misdemeanours made by the above-mentioned Act of 29 May 1989 amending some criminal law, misdemeanour law and other legal provisions restricting the free exchange of information. As a result of these changes to the Penal Code, article 282 (a) (which provided that anyone committing acts, including the dissemination of true information, for the purpose of causing public disturbances or riots and anyone organizing or leading a protest contrary to the provisions of the law is liable to up to three years' imprisonment), and article 187 (which made it an offence to build or own a radio transmitting set without the necessary authorization) were rescinded, while article 282 was amended (it now states that public incitement to disobedience or to violent action against a law or legal regulation of a Government body is an offence; the amendment consisted in the addition of the word "violent"). Article 52 (a) of the Code of Misdemeanours was also amended (it now provides that public incitement or encouragement to commit an offence, as well as public incitement to disobedience or to violent action against a law or legal regulation of a Government body, are misdemeanours if the act committed and its effects are not too broad in scope). These amendments are not enough because many provisions of the Penal Code are still contrary to freedom to possess and disseminate information, to the right of peaceful assembly and to the right to freedom of association. Work on the overall reform of the Penal Code and on the reform of the criminal law in the broad sense is therefore continuing and it is already in the final stages.

127. During the third period (September 1989-April 1990), the provisions of article 19 of the Covenant were implemented much more fully. Even before the repeal of the Prior Censorship Act, that practice had virtually ceased and had become very infrequent, relating as it did only to particularly serious matters. Criminal proceedings are no longer instituted in connection with publications appearing without censorship as part of what is known as the "second book market"; during this period, there were no cases involving offences under articles 271 and 273 of the Penal Code, although these provisions have not yet been repealed (they are scheduled for repeal under the Rehabilitation Act, which will declare void ab initio any judgements handing down penalties based on the provisions of 13 laws including the above-mentioned provisions of the Penal Code). All restrictions on the publication of books and periodicals were also removed, as were political restrictions on the production of films, plays and shows.

128. The Act of 11 April 1990 repealed the 1981 Control of Publications and Productions Act and amended the Press Act, which now provides that the publication of a newspaper or periodical may be prohibited by an ordinary court only on account of a breach of the provisions of the Press Act.

Article 20

129. The legal provisions in force in Poland on the prohibition of propaganda for war, advocacy of national, racial or religious hatred and incitement to discrimination, hostility or violence were described in earlier reports and have not been amended since then.

Article 21

130. The right of peaceful assembly continues to be governed by the Act of 29 March 1962 on Public Meetings, which considerably restricts this right by providing that the organization of a public meeting requires prior authorization by an administrative body, without any possibility of appeal to a court. This led to decisions under which the exercise of this right was arbitrarily denied, to the dispersal of peaceful meetings and demonstrations and to proceedings against persons who took part in them. The draft of a new law on public meetings is now before the Diet. It will contain an exact definition of the restrictions which may be placed on the exercise of this right, with due regard for the principles embodied in article 21 of the Covenant, and bring matters relating to this question within the jurisdiction of the courts.

131. It should be noted that the scope of the Public Meetings Act already excludes some meetings of a religious nature (under the Act of 17 May 1989 on the attitude of the State towards the Roman Catholic Church in the Republic of Poland), as well as meetings of voters organized with a view to nominating candidates for the offices of deputies and senators and meetings convened in connection with the election campaign waged in favour of candidates under the Act of 7 April 1989 on elections to the tenth session of the Diet of the Republic of Poland for the period 1989-1993 (Journal of Laws, No. 19, item 102).

132. The Act of 8 March 1990 on elections to local self-mangement bodies exempts meetings organized in connection with the election campaign from the requirement of prior authorization by an administrative body. As a result of the adoption of the new Public Meetings Act, the Polish legal system will be in keeping with article 21 of the Covenant.

Article 22

133. This provision of the Covenant was implemented differently during the three periods referred to at the beginning of this report.

134. During the first period, the 1932 Ordinance by the President of the Republic of Poland, as subsequently amended and known as the Associations Act, continued to be in force; it provided that Government administrative bodies enjoyed discretionary power to determine the types of associations that could be established and exercised full control over their activities. Although associations which had been refused recognition in law and even those which had been legalized continued to exist (including the "Solidarity" trade union), their establishment, the management of their activities and membership in them were regarded as offences punishable under article 278 of the Penal Code. If the existence, organization or purpose of such associations was kept secret from government bodies, the members were liable to up to three years' imprisonment.

135. A basic change took place during the second period with the entry into force of the Associations Act of 7 April 1989 (Journal of Laws, No. 20, item 104). This Act is a general legislative text relating to freedom of association in the sense that it applies to types of associations not governed by special laws. It applies both to Polish citizens and to foreigners who intend to exercise the right to freedom of association in Polish territory.

136. The Associations Act refers directly to the Covenant, not only in its preamble, but also in specific provisions. Article 1, paragraph 2, of the Act thus provides that the right to freedom of association may be subject only to restrictions which are prescribed by law and which are necessary in the interests of national security or public safety, the protection of public health or morals or the protection of the rights and freedoms of others. This is in keeping with article 22, paragraph 2, of the Covenant.

137. The Act defines an association as a voluntary, self-managed and permanent union which is established for non-profit-making purposes and independently defines its objectives and programme of work and adopts the rules relating to its activities, particularly its statute. Every association has the right to take part in public affairs, regardless of the objectives of its activities as defined in its statute.

138. An entirely new approach adopted in the Associations Act is the principle that decisions relating to associations may be taken only by the courts. This is true both of registration procedures and of the implementation of legal measures if an association breaks the law. The competent courts are the voivodship courts (in first instance) and the Supreme Court (in second instance).

139. The founding of an association is governed in such a way that the persons who wish to found it (at least 15) adopt the statute and apply to the competent court for registration. The court takes a decision on the registration of the association after ascertaining that its statute is in conformity with the law. The Act also governs the founding of unions of associations. An association becomes a legal person and may carry out its activities as soon as the decision on registration enters into force.

140. A simpler form of association does not have legal personality and may be founded by no fewer than three persons. Such an association is founded when the persons concerned adopt the rules on the association's activities and report the founding of the association in writing to the local competent administrative body. At the request of that body, the court may prohibit the founding of such an association if it is not in conformity with the law. If the association's activities have not been prohibited within 30 days of notification of its founding, it may begin to carry out those activities.

141. When an association's activities are unlawful, either the administrative bodies which are competent to monitor the activities of associations or the prosecutor may apply to the court to have a warning issued to the association's authorities or to call for new elections to the board of the association, subject to suspension of the board from its functions. The harshest penalty which the court may apply is the dissolution of the association if its activities are flagrantly or constantly contrary to the law or the provisions of its statute and if there is no possibility that it may resume activities in keeping with the law or its statute. Such supervisory measures also apply to the simpler form of association.

142. The Act no longer refers to the public interest associations governed by the 1932 Ordinance. Public interest associations have become ordinary associations under the new Act, which also applies to academic organizations.

143. Restrictions on the freedom of association of soldiers and militia and security officials include prior authorization by the competent military bodies and internal services. Prior authorization is also required for the activities of associations in places and units managed by the armed forces or within the jurisdiction of the internal services.

144. From the time of the entry into force of the new Associations Act until 30 June 1989, the voivodship courts received 278 applications to register associations. By late 1989, the courts had considered 1,508 applications to register associations, 1,229 of which were accepted; the other applications were considered in 1990.

145. The right of workers to form and join trade unions is governed by the Act of 7 April 1989 amending the Trade Union Act (Journal of Laws, No. 20, item 105). This Act repealed the rule in force since 1982 that only one trade union organization may operate in an enterprise and it thus laid the legal foundations for full trade union pluralism. The principle was adopted that workers are entitled to form and join enterprise, national and other trade unions, as they wish. A trade union brings together workers from one or more enterprises according to type of work, branch or occupation. A new provision states that, where several trade union organizations operate in an enterprise, they may elect joint trade union representatives and decide how joint opinions on the enterprise's operating problems are to be submitted to the head of the enterprise and the staff self-management bodies.

146. The right of private farmers to form associations is governed by the Act of 7 April 1989 on unions of private farmers (Journal of Laws, No. 20, item 106). Article 1 of this Act provides that private farmers and the members of their families working with them in agricultural activities are entitled to form and join unions of private farmers to protect their professional rights and interests. The Act guarantees these unions autonomy, self-management and independence from Government administrative bodies. A union of private farmers is established, as in the case of a workers' union, when it is registered by a court. A court may refuse to register an association if it finds that the provisions of the statute adopted by the farmers wishing to establish a union indicate that it is not a union within the meaning of the law or if such provisions are not in conformity with the law. Private farmers' unions enjoy the rights and obligations guaranteed by law to farmers' social and professional organizations as far as representation and the protection of farmers' rights and interests are concerned (these are organizations established under the Act of 8 October 1982 on farmers' social and professional organizations (Journal of Laws, No. 32, item 217), which was described in the previous report). If a union of private farmers engages in activities contrary to the Constitution of the Republic of Poland or other laws, the court may set a time-limit of three months to adapt such activities to the laws in force and, if this has no effect, it may sentence the union members to a fine of up to 50,000 zlotys. If such measures have no effect and the union continues to carry out activities specificially contrary to the Constitution or other laws, the court may order the competent union authorities to hold new elections, within a particular time-limit, subject to suspension of the union's activities; only where such a measure also fails to remedy the situation may the court decide to remove the union from the register, thereby forcing it to cease its activities and to go into liquidation in accordance with the procedure provided for in the statute. Judicial proceedings in such cases are instituted on the initiative of the prosecutor.

147. The Acts amending the Act on trade unions and professional unions of private farmers were adopted on the basis of drafts prepared during the "round table" at which the trade unions were represented. Under the provisions of these Acts, new trade unions were registered by the Warsaw Voivodship Court, including the "Solidarity" professional independent trade union and the "Solidarity with private farmers" professional independent trade union. These trade unions operate national-wide.

148. Problems relating to trade union activities are dealt with in the Act of 24 May 1989 on the special rights of certain persons to restoration of their employment contract (Journal of Laws, No. 32, item 172), which is designed to compensate for loss or injury sustained by persons subjected to repression for taking part in trade union activities during the period of martial law and subsequent years, when trade union pluralism was abolished and those who challenged the anti-democratic and anti-trade union legal system were subjected to repression. This Act guarantees the right to resume work with the same employer to persons whose employment contract had been terminated by the employer with or without notice or whose contract was terminated by agreement between the parties on the initiative of the enterprise because of a person's participation in the trade union, because of his activity during the period when trade union activities were suspended or because he took part in a trade union activity in a manner not in keeping with the provisions of the Trade Unions Act of 8 October 1982. The enterprise may refuse employment only in cases where the circumstances are such as to make employment impossible. In the event of denial of employment, the case is considered by the Social Conciliation Commission, half of whose members are appointed by the trade unions. Juries composed of three members of the Commission consider cases in public meetings. A decision to approve an application for re-employment makes it an obligation for the enterprise to conclude an employment contract with the person concerned. The Act entered into force on 31 May 1989 and applies to cases which occurred prior to 10 April 1989. It was amended by the Act of 7 December 1989 (Journal of Laws, No. 64, item 391), under which the provisions of the Act also apply to persons dismissed on account of their political or religious beliefs or their activities in self-management bodies, including persons employed as a result of a nomination.

149. Mention should also be made of the Act of 29 May 1989 on the pardoning and annulment of certain offences and misdemeanours (Journal of Laws, No. 34, item 179). Under this Act all offences committed in connection with a strike or protest are pardoned and annulled if they were committed between 31 August 1980 and 29 May 1989. The abolition also applies to all offences committed for political reasons connected with militarization and those committed to prevent strikes and protests or other violations of public safety or order for political reasons. The Act is applied by the court competent to hear the matter proprio motu or at the request of the party concerned. Its decision on the application of the Act is open to appeal. The law also applies to misdemeanours committed between 31 August 1980 and 29 May 1989 for political reasons or in connection with a strike or protest.

150. During the third period, some corrections were made to the legislation adopted following the "round table". Steps were taken to modify the provision of the Associations Act under which the Polish Scouts Union alone had the right to use that title, together with scouts' uniforms, badges and symbols, a right denied to other scouting organizations, which were then illegal. The Polish Scouts Union's privileges were abolished by the Act of 23 February 1990.

151. Action has also been taken to guarantee complete freedom in the establishment and operation of political parties. The Associations Act does not apply to them, and a bill on them is at present being considered by the Diet. Hitherto, certain specifically named parties alone had the right to exist, a situation based on the relevant provisions of the Constitution, which gave the leading role to one party operating in alliance with two others. The abrogation of these provisions by the Constitution Act of 29 December 1989 made political pluralism possible not just in practice, but also in law. Under that Act, the sole restriction on political parties' activities arises if their objectives or activities are not consistent with the Constitution, which has to be established by the Constitutional Court.

152. Finally, it may be noted that the Government has prepared a bill to modify the Trade Unions Act so as to extend the right to form trade unions to members of the police force and prison service.

Article 23

153. The legal provisions in force in Poland on protection of the family, marriage, the rights and obligations of spouses and the protection of children in the event of dissolution of the marriage have been described in previous reports and have not been amended.

154. In 1987 there were 252,819 marriages; there has been a steady decline in the number of marriages: in 1980, 307,373; in 1985, 266,816; and in 1986, 257,887. In that same year, 49,707 marriages were dissolved by divorce (in 1986, 50,580). In 1988, the courts heard 98,403 divorce suits, 55,293 of which were successful; in 1989, they heard 97,862 cases, resulting in 55,141 divorces.

155. In 1988, maintenance was awarded in 211,352 cases (in 1989, 301,233 cases) and the family courts handed down 10,406 decisions on the limitation of parental authority (in 1989, 9,592 decisions), 3,415 decisions on loss of parental authority (in 1989, 3,379) and 1,529 on suspension of such authority (in 1989, 859). In 1988 a total of 183,354 minors were covered by the family courts guardianship system (in 1989, 178,537). At 31 December 1988, there were 32,005 minors in custodial and educational institutions (in 1989, 31,683), while there were 9,131 pupils at young people's work centres run by guardians. The family courts carry out their functions with the support of 852 professional guardians and 14,694 social guardians.

Article 24

156. Under Polish law a birth certificate is issued for a child immediately after his birth and he acquires Polish nationality at the time of his birth. The legal provisions governing this matter have not been changed.

Article 25

157. During the first period, because of the existing legal system, society as a whole could not participate in the management of public affairs and the representative institutions of the time (the Diet and the elected people's councils) were no more than a "front" concealing the real machinery for the exercise of power. Political parties could not be set up lawfully.

158. During the second period, legislation amending the Act on the Regulations for Elections to the Diet came into force, being based of course on a political agreement allocating a certain number of seats in advance to particular political groupings, but in essence constituting a major step forward in public participation in the exercise of power. A second chamber of the Diet was also set up - the Senate, elected on the basis of fully democratic electoral regulations. The second chamber of the Parliament and the electoral rules for the two chambers were dealt with in detail in the above-mentioned Act of 7 April 1989, on the amendment of the Constitution, on the amendment of the regulations for elections to the Diet in the tenth legislature (1989-1993) and on the regulations for elections to the Senate.

159. The Constitution Act determined the fundamental principles of the regulations for elections to the Senate (in the same way as those of the regulations for elections to the Diet) and enabled the electors themselves to put forward candidates directly for the offices of deputy, senator and member of a people's council. In the past, that right had been reserved solely for political and social organizations approved by the party in power - the Polish United Workers' Party.

160. The regulations for elections to the Diet of 1989 afforded electors themselves a real chance to put forward candidates for the office of deputy, since it was decided that the deputies elected in constituencies could also be proposed by a group of at least 3,000 electors in the constituency in question. An unlimited number of candidates could be put forward for each seat, with the proviso that each seat was allocated in advance either to a political group or to a person not belonging to any political party.

161. In each constituency, there had to be at least one seat for someone without political affiliations; such seats accounted for 35 per cent of the total. In addition, there was also a central list, which had been drawn up in advance.

162. In the regulations for elections to the Senate, the principle was again adopted that electors in a constituency numbering at least 3,000 had the right to put forward candidates for seats in the Senate. However, not only could an unlimited number of candidates be put forward for each seat, but in addition there was no advance distribution of seats among political parties and organizations on the one hand and candidates without political affiliations on the other. The elections to the Senate were thus fully democratic.

163. To protect electors' rights, the electoral regulations gave an elector the opportunity to appeal against any decision rejecting a complaint of irregularities in the electoral roll, and in particular, the non-registration or registration of persons on the roll, and to lodge an objection with the Supreme Court against the election of a deputy or senator if an infringement of the electoral regulations had occurred or an offence had been committed in the elections which could have affected the result. The Supreme Court, after considering the appeal, formulates an opinion and transmits it to the Diet (Senate), which takes the final decision on whether the election of a deputy (senator) is valid.

164. The other provisions of the regulations mentioned regulated in detail the other problems connected with the other principles governing elections (universal suffrage, equality, direct and secret voting).

165. On the basis of these electoral regulations, elections to the Senate were organized on 4 June 1989. On 18 June a second ballot was held, because some seats had not been decided in the first ballot. Thirty-two objections to these elections were lodged with the Supreme Court.

166. Mention should also be made of many new laws regulating the operation of self-management or self-managing associations, which represent a particular way in which citizens can influence the conduct of public affairs.

167. No significant changes took place in this field until the third period. They were introduced in two laws adopted by the Parliament on 8 March 1990, on local self-management and on the regulations for elections to communal bodies.

168. Under these laws, the commune, as the basic unit in the organization of public life, has legal personality, financial autonomy and exclusive competence in public affairs at the local level. The key body in the commune is the communal council (in towns, the municipal council), elected by fully democratic elections, while its executive body is the board, presided over by the mayor, burgomaster or chairman. The independence of the communes is protected by law. Disputes between administrative organs of the State and local self-management organs are referred to the courts, including cases concerning the legality of resolutions by local self-management organs. Local self-management only applies at the basic level in the country's administrative structure. Elections to communal bodies are organized on the basis of universal suffrage; they are equal, direct and secret. Members of the councils are elected by a majority system in rural and urban communes with up to 40,000 inhabitants, and by a proportional system in urban communes with more than 40,000 inhabitants. Candidacies for these seats can be put forward by any group of at least 15 electors in constituencies with one seat and at least 150 in those with several seats. Complaints are heard by the voivodship courts.

169. During the third period, apart from associations, it was possible for political parties to function. There are at present more than 60 political parties, generally with only few members. There is no special procedure for registering them, and the law on political parties has not yet been adopted by the Diet.

170. Significant changes were made in 1989 and 1990 with regard to the principle of equal access to the public service. The words requiring the person concerned to serve the interests of a particular political movement or political party have been dropped from the oath of office. The legal provisions at present in force no longer impose such conditions.

171. The legal regulations described give citizens real influence on political and professional life. Political, social and economic pluralism has become a reality. However, the legislature will not take its proper form until there are fully democratic elections to the Diet.

Article 26

172. The Polish political system is based on the principle of the equality of all citizens without discrimination. However, that principle had not hitherto been respected in practice. Many people were discriminated against as regards access to the public service because of their political opinions or convictions. It is only now that this principle is being observed.

173. On 4 March 1988, Poland ratified the Convention against Apartheid in Sports.

Article 27

174. Although there were no formal restrictions in the Polish legal system on the rights of minorities, in practice there were many, and these irregularities have not yet been fully eliminated.

175. It is necessary in particular to pursue activities aimed at developing the system of education for national minorities. The rights of national minorities in the field of education are governed by the Order of the Ministry of Education dated 21 December 1988 on the organization in primary and secondary schools of teaching in their mother tongue for children and young people not of Polish nationality (this Order was published in the Official Journal of the Ministry of Education, 1989, No. 11). It adopts the principle that instruction in their mother tongue is provided free of charge for children and young people of non-Polish nationality. Courses in the mother tongue can be organized in schools with a language of instruction other than Polish, in schools with additional courses in the mother tongues and in inter-school sections, groups or centres for mother-tongue teaching. These regulations apply to teaching in the mother tongues of all national minorities. In addition, history and geography syllabuses include information on a particular nation's history and elements of its geography.

176. At present 6,346 pupils are taking courses in the mother tongue at 122 schools. The greatest number attend Byelorussian language courses (4,134 pupils at 52 schools, including 2 high schools). Courses are also organized in such languages as Lithuanian, Ukrainian and Slovak, but the demand has not been fully met.

177. There have also been certain difficulties with the registration of associations whose members are Polish citizens of non-Polish nationality. It is only now that these associations are escaping from the "supervision" of State organs and can undertake independent activities. They are now very active. The problems of the German minority have been raised during bilateral talks between Poland and the Federal Republic of Germany.

178. In the Diet, a National and Ethnic Minorities Commission has been set up to consider the situation of national and ethnic minorities in Poland and take action to enable them to exercise their rights. Thanks to the Commission and other State organs and institutions, it should be possible to remedy much of the damage done; for example, the expulsion of the people of Lemkowie from their home region in 1947 as part of the "Vistula" campaign, the changes in the names of their places of origin and the obstacles to their return to their native region. The cultural and social development of minorities was also made difficult by the fact that it was in practice impossible to set up

genuine organizations of members of a particular national minority, that they were infiltrated by members of the security services and that their leaders were subjected to harassment. The situation improved radically after September 1989, but it will take many years and a great deal of new legislation to solve the problems and make good the damage.

179. As a footnote to the discussion of these problems, we may also mention the assistance given to citizens of the German Democratic Republic who tried to enter the Federal Republic of Germany when visiting Poland in the autumn of 1989 and, more recently, the aid given to 700 Arab refugees trying to get into Sweden.